

TOWN OF ADDISON, TEXAS

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING AN ASSIGNMENT OF GROUND LEASE BETWEEN THE TOWN OF ADDISON AND WILLIAM R. WHITE AND DUKE'S ICE HOUSE, LLC FOR COMMERCIAL AVIATION USE ON PROPERTY LOCATED AT 16101-16111 ADDISON ROAD, AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONSENT OF LANDLORD, AND PROVIDING AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

Section 1. The Assignment of Ground Lease between the Town of Addison, Texas and William R. White and Duke's Ice House, LLC for commercial aviation use on property located at 16101-16111 Addison Road, a copy of which is attached to this Resolution as **Exhibit A**, is hereby approved. The City Manager is hereby authorized to execute the Consent of Landlord.

Section 2. This Resolution shall take effect from and after its date of adoption.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this the 9th day of February, 2016.

Todd Meier, Mayor

ATTEST:

By: _____
Laura Bell, City Secretary

APPROVED AS TO FORM:

By: _____
Brenda N. McDonald, City Attorney

EXHIBIT A

STATE OF TEXAS	§	
	§	ASSIGNMENT OF GROUND LEASE
COUNTY OF DALLAS	§	

This Assignment of Ground Lease (the "Assignment") is entered into and effective as of ____ 20 ___, at Addison, Texas, by and between **WILLIAM R. WHITE** (herein referred to as "Assignor") and **DUKE'S ICE HOUSE, LLC**, a Texas limited liability company (herein referred to as "Assignee").

WHEREAS, a Ground Lease was executed on January 19, 1984 between the City of Addison, Addison Airport of Texas, Inc. and William R. White ("Ground Lease") by the terms of which certain real property located at 16101 Addison Road, Addison Airport, within the Town of Addison, Texas, and owned by the City, was leased to William R. White, recorded in Volume 84227, Page 0026 of the Official Public Records of Dallas County, Texas (the "OPR"); and

WHEREAS, said Ground Lease was amended by that certain Amendment to Ground Lease dated November 30, 2001, recorded in Volume 84227, Page 0021 of the OPR ("First Amendment"); and

WHEREAS, the leasehold interest created under the Ground Lease was conveyed from William R. White to Great Escape Aviation, Inc. pursuant to that Special Warranty Deed with Vendor's Lien dated October 1, 2001, recorded in Volume 20012332, Page 05145 in the OPR; and

WHEREAS, a Correction Special Warranty Deed with Vendor's Lien and Correction to Amendment to Ground Lease between the Town of Addison, Texas, William R. White and Great Escape Aviation, Inc., was executed effective October 1, 2001, (filed and recorded as Document #200600013563 on January 12, 2006 in the OPR) correcting references made in error in the November 30, 2001 Amendment referenced hereinabove; and

WHEREAS, said Ground Lease was transferred from Great Escape Aviation, Inc., as Grantor, to William R. White, as Grantee, by way of Deed in Lieu of Foreclosure effective July 1, 2011, recorded in the OPR as Document No. 201100177110; and

WHEREAS, by virtue of such assignments, amendments and/or modifications made to the Ground Lease, Assignor is the Tenant under the Ground Lease (a true and correct copy of said Ground Lease in its entirety with all hereinabove referenced assignments, amendments and modifications made thereto are attached and incorporated herein by reference as Exhibit "A"); and

WHEREAS, the Ground Lease provides that, upon the expiration or termination of that certain agreement referred to and defined in the Ground Lease as the "Base Lease"

(and being an Agreement for Operation of the Addison Airport between the City and Addison Airport of Texas, Inc.), the City is entitled to all of the rights, benefits and remedies, and will perform the duties, covenants and obligations, of the Landlord under the Ground Lease; and

WHEREAS, the said Base Lease has expired and the City is the Landlord under the Ground Lease; and

WHEREAS, the Ground Lease provides in Section 9 thereof that, without the prior written consent of the Landlord, the Tenant may not assign the Ground Lease or any rights of Tenant under the Ground Lease (except as provided therein), and that any assignment must be expressly subject to all the terms and provisions of the Ground Lease, and that any assignment must include a written agreement from the Assignee whereby the Assignee agrees to be bound by the terms and provisions of the Ground Lease; and

WHEREAS, Assignor desires to assign the Ground Lease to Assignee, and Assignee desires to accept the Assignment thereof in accordance with the terms and conditions of this Assignment of Ground Lease.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and conditions contained herein, the sufficiency of which are hereby acknowledged, the parties hereto each intend to be legally bound and agree as follows:

AGREEMENT

1. Assignor hereby assigns, bargains, sells, and conveys to Assignee, effective as of the date above, all of Assignor's right, title, duties, responsibilities, and interest in and to the Ground Lease, attached hereto as Exhibit A, and incorporated herein for all purposes, TO HAVE AND TO HOLD the same, for the remaining term thereof, and Assignor does hereby bind himself, and his successors and assigns to warrant and forever defend the same unto Assignee against every person or persons lawfully claiming an part thereof through Assignor.

2. Prior to the effective date of this Assignment, Assignee agrees to pay an Assignment Fee in the amount of Four Hundred Fifty Dollars and no/100 (\$450.00) to Landlord.

3. Assignee hereby agrees to and shall be bound by and comply with all of the terms, provisions, duties, conditions, and obligations of tenant under the Ground Lease. For purposes of notice under the Ground Lease, the address of Assignee is:

Duke's Ice House, LLC
c/o Mohsen Heridari, Member
16101 Addison Road
Addison, Texas 75001

and:
Mr. Daks Richards
Travis Daxon Howard Richard
2926 Maple Avenue, Suite 200
Stoneleigh P Building
Dallas, Texas 75201

4. Nothing in this Agreement shall be construed or be deemed to modify, alter, amend or change any term or condition of the Ground Lease, except as set forth herein.

5. This Assignment is subject to the consent and filing requirements of the Town of Addison, Texas.

6. The above and foregoing premises to this Assignment and all other statements made herein are true and correct, and Assignor and Assignee both warrant and represent that such premises and statements are true and correct, and that in giving its consent, Landlord (as defined in the Consent of Landlord attached hereto) is entitled to rely upon such representations and statements.

7. The undersigned officers and/or agents of the parties hereto are the properly authorized persons and have the necessary authority to execute this Assignment on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

8. All parties acknowledge that the Property Boundary Survey dated January 17, 1984 is the true and correct Boundary Survey depicting the leased Premises' 1.275 acres (or 55,559.60 Sq. Ft.), attached hereto as Exhibit B, and incorporated herein for all purposes.

IN WITNESS WHEREOF, Assignor and Assignee have executed and delivered this Assignment on the day and the year first set forth above.

ASSIGNOR: William R. White, an Individual _____	ASSIGNEE: Duke's Ice House, LLC a Texas limited liability corporation _____ <u>Mohsen Heridari, Member</u>
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ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, on this day personally appeared William R. White, Individual, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein stated.

GIVEN under my hand and seal of office this _____ day of _____, 20____.

[SEAL]

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, on this day personally appeared Mohsen Heridari, Member of Duke's Ice House, LLC, a Texas limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein stated.

GIVEN under my hand and seal of office this _____ day of _____, 20____.

[SEAL]

Notary Public, State of Texas

CONSENT OF LANDLORD

The Town of Addison, Texas ("Landlord") is the Landlord in the Ground Lease described in the Assignment of Ground Lease (the "Assignment") entered into and effective as of _____ 20____, at Addison, Texas, by and between William R. White, Individual (herein referred to as "Assignor") and Duke's Ice House, LLC, a Texas limited liability company, (herein referred to as "Assignee"). In executing this Consent of Landlord ("Consent of Landlord"), Landlord is relying upon the warranty and representations made in the aforementioned Assignment by both Assignor and Assignee, and in relying upon the same, Landlord hereby consents to the aforementioned Assignment from Assignor to Assignee.

This Consent of Landlord is contingent upon, as solely determined by the Landlord, the Assignee causing the property under the Ground Lease, during the Term, to be brought into and remain in compliance with the rules, regulations and requirements of the Americans with Disabilities Act of 1990, as amended, at Assignee's sole cost and expense ("Improvements"). Failure to obtain and/or remain in compliance with this Consent of Landlord shall constitute a Default Event under the Ground Lease. To further guarantee and assure Landlord that the Assignee will fulfill its obligation hereunder, prior to Assignee submitting an application for a construction permit with the Town of Addison, Texas, Assignee shall present substantial written documentation, including but not limited to contractor's original bid and/or final bid, Assignee's acceptance and bank documentation, evidencing an escrow account in the full amount of the cost of the Improvements ("Escrowed Funds"). The Escrowed Funds may only be accessed to satisfy payment for construction and completion of the Improvements; Assignee shall provide Landlord written notice prior to receiving a distribution from the Escrowed Funds to pay for the completed Improvements. Assignee's failure to use the Escrowed Funds solely for the payment of completed Improvements, without the Landlord's prior written consent, shall constitute a Default Event under the Ground Lease. Alternatively, and at Assignee's election, Assignee shall cause to be issued in favor of Landlord, and kept in full force and effect at all times during any period of construction, an irrevocable, stand-by letter of credit to secure the faithful performance of all construction work and the payment of all obligations arising during the construction (including, without limitation, the payment of all persons performing labor or providing materials under or in connection with the Building Improvements), in the amount of one hundred percent (100%) of the construction costs, such stand-by letter of credit to be drawn upon by site draft conditioned only upon the certification of the Landlord that an event of default has occurred under this Lease with respect to the construction of the Building Improvements. Upon written approval by Landlord on not less than ten (10) days written notice to Landlord from Assignee, Assignee shall have the right to reduce the amount of the stand-by letter of credit on a calendar quarterly basis by an amount equal to the construction costs incurred and paid by Assignee during the immediately preceding calendar quarter as demonstrated by the Construction Value Evidence submitted to Landlord.

Notwithstanding this Consent of Landlord, Landlord does not waive any of its rights under the Ground Lease as to the Assignor or the Assignee, and does not release

Assignor from its covenants, obligations, duties, or responsibilities under or in connection with the Ground Lease, and Assignor shall remain liable and responsible for all such covenants obligations, duties, or responsibilities. In addition, notwithstanding any provisions of this Consent of Landlord or the above and foregoing Assignment to the contrary, this Consent of Landlord shall not operate as a waiver of any prohibition against further assignment, transfer, conveyance, pledge, change of control, or subletting of the Ground Lease or the premises described therein without Landlord's prior written consent.

This Consent of Landlord shall be and remain valid only if and provided that, by no later than 6:00 o'clock p.m. on _____, _____, 20__:

(i) the Assignment has been executed and notarized by both Assignor and Assignee,

(ii) all other matters in connection with the transfer, sale, and/or conveyance by Assignor to Assignee of the Assignor's interest in the Ground Lease have been fully consummated and completed and the transaction closed as reasonably determined by Landlord (such matters including, without limitation, the full execution and finalization of this Assignment and any other documentation so required by Landlord relating to this transaction) and delivered to Landlord c/o Mr. Bill Dyer, Addison Airport Real Estate Manager, at 16051 Addison Road, Suite 220, Addison, Texas 75001. Otherwise, and failing compliance with and satisfaction of each all of paragraphs (i) and (ii) above, this Consent of Landlord shall be null and void *ab initio* as if it had never been given and executed.

Signed this _____ day _____, 20__.

LANDLORD:
TOWN OF ADDISON, TEXAS

By: Wesley S. Pierson, City Manager